

**ORDINANCE NO. 12-34**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA CONSENTING TO A SUBLEASE OR SITE LICENSE AGREEMENT BETWEEN T-MOBILE SOUTH LLC AND METRO PCS FLORIDA LLC TO ALLOW METRO PCS FLORIDA LLC TO CO-LOCATE ITS WIRELESS COMMUNICATIONS FACILITY WITH T-MOBILE SOUTH LLC ON THE MONOPOLE COMMUNICATIONS TOWER LOCATED AT BABCOCK PARK, 651 EAST 4 AVENUE, HIALEAH, FLORIDA, AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A CO-LOCATION WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT WITH METRO PCS FLORIDA LLC, A DELAWARE LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; FOR AN ANNUAL RENTAL FEE OF \$8,100.00, WHICH REPRESENTS 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC, UNDER ITS LEASE WITH METRO PCS; DURING ITS INITIAL TERM AND 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC THEREAFTER PLUS A \$6,000 CONSENT FEE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, City and Omnipoint Holdings, Inc., a Delaware corporation, now known a T-Mobile USA, Inc and further assigned to T-Mobile South, LLC, a Delaware limited liability company, ("T-Mobile") entered into that certain lease agreement dated June 20, 2003 pursuant to Hialeah, Fla., Ordinance 03-54 (June 19, 2003) as renewed for an additional five years pursuant to Hialeah, Fla., Ordinance 08-40 (May 14, 2008), and as same be further amended from time to time, (collectively the "Ground Lease" or "Prime Lease"); whereby T-Mobile leased a portion of the Property more particularly described therein (the "Property") for the purpose of constructing,

operating and maintaining a communications facility and uses incidental thereto, including a 95-foot monopole and all necessary connecting appurtenances; and

**WHEREAS**, Metro PCS Florida LLC (“Metro PCS”) desires to sublease from T-Mobile South LLC both ground space and tower space to install, maintain and operate Metro PCS’ communications facility on the Babcock Park communications tower; and

**WHEREAS**, City desires to consent to Site License Agreement (“SLA”) between T-Mobile South LLC and Metro PCS; and

**WHEREAS**, Metro PCS desires to enter into a lease agreement with the City to permit the co-location with T-Mobile South LLC on the Babcock Park communications tower and the City likewise agrees to enter into a lease in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** The City of Hialeah, Florida hereby consents to a sublease or Site License Agreement between T-Mobile South LLC and Metro PCS Florida LLC to allow Metro PCS Florida LLC to co-locate its wireless communications facility with T-Mobile South LLC on the monopole communications tower located at Babcock Park, 651 East 4 Avenue, Hialeah, Florida, and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Co-Location Wireless Communications Facility Lease Agreement with Metro PCS Florida LLC, a Delaware limited liability company, a copy of which is attached hereto and made a part hereof in substantial form as Exhibit “1”, for an annual rental fee of \$8,100.00, which represents 50% of the amount of the rental fee due T-Mobile South LLC under its lease with Metro PCS, during its initial term and 50% of the amount of the rent due T-Mobile South LLC

thereafter plus a \$6,000 consent fee. The location and landscaping of the wireless communications facility is subject to site plan review.

**Section 3: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed with a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 5: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is

withheld or if the City Council overrides the Mayor's veto

PASSED and ADOPTED this 26th day of June, 2012.

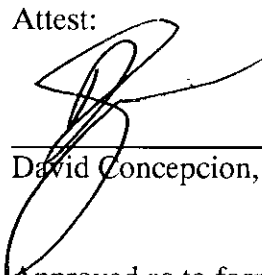
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.



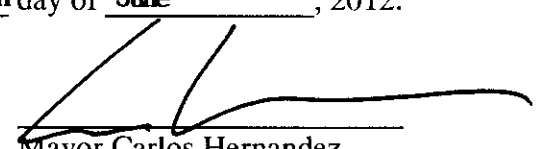
Isis Garcia Martinez  
Council President

Attest:

Approved on this 28th day of June, 2012.



David Concepcion, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers.  
Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez,  
Hernandez and Lozano voting "Yes".